



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,019	07/15/2003	Christopher T. Dohl	33979	8613

23589 7590 01/31/2007  
HOVEY WILLIAMS LLP  
2405 GRAND BLVD., SUITE 400  
KANSAS CITY, MO 64108

EXAMINER
----------

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
----------	--------------

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/31/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/620,019

Applicant(s)

DOHL ET AL.

Examiner

Lien T. Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 41-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Claims 41-43,47-48,52-54,58-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsland ( US2003/0091698A1).

Marsland discloses wheat-containing dough and bakery products such as bagel, breads, cookies, doughnuts, pastries etc... The products comprise a proteinaceous ingredient which is a modified non-viscoelastic wheat protein isolate in amount from about 5-50% and proteinaceous ingredients selected from the proteins cited in paragraph 0010 or other raw materials having a protein content of greater than 25%. The products include fat, other carbohydrates, emulsifying agent, flavorings, and leavening agents. The food products may comprise greater than 25% protein. The second protein may be in amount of 14%. ( see paragraphs 0066, , 0015, 0018 and the examples)

Marsland does not disclose the gluten is vital wheat gluten, the chemical leavening agent as claimed , the protein content of the product as in claims 41 and 52 and the product being yeast leavened.

The modified wheat protein isolate disclosed in Marsland is the same as the modified wheat protein concentrate as claimed. Page 3 of the specification discloses the wheat protein concentrates have a protein content of at least about 70, preferably at least about 82%. Marsland discloses the wheat protein isolate has a protein content greater than 70%. Thus , the two proteins are the same. Marsland discloses other protein materials can be used as long as it has a protein content of greater than 25% and includes gluten. Thus, it would have been obvious to one skilled in the art to use vital wheat gluten because it is a well-known gluten protein that is commonly used in

Art Unit: 1761

dough product. It would have been obvious to use any known chemical leavening agent depending on the product made; all the agents claimed are well known. It would also have been obvious to use yeast depending on the type of baked product. For instance, bagel, pizza dough and many types of bread are typically leavened by yeast. It would have been obvious to vary the amount of protein to obtain any desired amount of protein depending on the protein content wanted for the product and the type of product made.

Claims 44-46,49-51,55-57,60-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsland in view of Haralampu.

Marsland does not teach adding resistant starch of the types claimed,

Haralampu et al disclose a granular resistant starch; the starch is chemically modified. The resistant starch is used in a variety of food such as cookies, breads, brownies, snacks etc.. The resistant starch is characterized by a total fiber content in the range of from about 20-50% by weight. The starch is used in amounts ranging from about 1-15%. The starch is used in place of sugar, flour, and/or fat to lower calorie and fat content and the starch is used to increase fiber content ( see col. 2 lines 53-64, col. 4, col. 6 lines 29-57).

Marsland discloses the carbohydrate sources include fiber. Thus, it would have been obvious to one skilled in the art to add the resistant starch taught by Haralampu et al as a source of fiber to obtain the benefit taught by Haralampu et al.

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wed-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 29, 2007

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
*Group 1700*